

Editor's Note: Director's decision upheld authority to issue stay in this appeal after the time provided by 43 CFR 4.12(b)(4); 11 OHA 117 (July 27, 1995)

DAVID M. BURTON ET AL.

IBLA 95-256, 95-257

Decided February 23, 1996

Appeals of a decision by the Area Manager of the Beaver River Resource Area, Bureau of Land Management, approving a prairie dog study on the Adams Well Demonstration Site. EA UT-044-95-16.

Affirmed.

1. Environmental Quality: Environmental Statements--
National Environmental Policy Act of 1969: Finding
of No Significant Impact

A finding by BLM that an 80-acre prairie dog study estimated to consume 1 AUM of forage would have an insignificant impact on a 23,000-acre grazing allotment containing about 1,980 AUM's of forage is affirmed; the record on appeal supports BLM's decision to proceed with the study project based upon a hard look at the study taken during preparation of planning documents including two EA's, a staff evaluation of the project, and a recovery plan developed jointly by the State of Utah Division of Wildlife Resources and the U.S. Fish and Wildlife Service.

APPEARANCES: David M. Burton, Sherel P. Lister, Richard Batt, and Scott Holyoak of Parowan, Utah, and Lorin C. Jones, Stewart Sommerville, Ron Proctor, Joe Miner, and Antone Thompson of Cedar City, Utah, pro sese; David K. Grayson, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

David M. Burton, Sherel P. Lister, and Lorin C. Jones have appealed a January 26, 1995, decision by the Area Manager, Beaver River Resource Area, Bureau of Land Management (BLM), ordering a prairie dog study on public lands; BLM found the study "will not have any significant impacts on the human environment." See environmental assessment UT-044-95-16 (1995 EA). The appeal is docketed as IBLA 95-256 and is supported by a statement of reasons (SOR). Stewart Sommerville, Ron Proctor, Joe Miner, Antone Thompson, Richard Batt, and Scott Holyoak have also appealed the BLM decision "as Concerned Citizens of Iron County." Their appeal is docketed as IBLA 95-257, and they have also filed an SOR. A stay of the

BLM decision was ordered on May 30, 1995. On June 19, 1995, BLM filed with the Director, Office of Hearings and Appeals, a petition seeking review of the stay order. By decision dated July 27, 1995, the Director upheld the Board's stay order and directed the Board to grant expedited consideration to the appeals, which are now consolidated for decision.

At issue is a proposal to conduct a study of Utah prairie dogs (Cynomys parvidens), a threatened species (49 FR 22330 (May 29, 1984)), at two 20- to 40-acre demonstration sites for 3 to 5 years. The study is to be located on site #6 in the Adams Well grazing allotment, Iron County, Utah, and is designed to monitor the response of the animals and that of native vegetation to conditions at the site (1995 EA at 1). One area is to be fenced and opened only as needed to control vegetation by allowing livestock to graze and trample plants, and the other area is to be left unfenced and grazed. Monitoring would be "used to select habitat parameters and monitoring methodology * * * in the design of a research study on the effects of habitat conversion and rangeland restoration on the population dynamics of Utah prairie dogs." Id. The 40-acre enclosure would contain less than 0.2 percent of the Federal land in the allotment (id. at 2); any vegetation used by the project would be compensated for by the Kern River pipeline seeding, located within 1 mile of the project. Id. While the Adams Well allotment is located in portions of secs. 11, 15, and 16 of T. 32 S., R. 12 W., the location of the study site was identified in 1979 on a map designating it site #6 of a series of potential Utah prairie dog transplant sites analyzed by environmental assessment EA UT-040-48, approved on July 23, 1979, (1979 EA) as situated in the SE $\frac{1}{4}$ of sec. 15, T. 32 S., R. 12 W.

Appellants in IBLA 95-256 contend in 10 numbered arguments (Burton SOR) that the BLM decision conflicts with a 1991 "Utah Prairie Dog Recovery Plan" prepared by the Utah Department of Natural Resources, Division of Wildlife Resources and the U.S. Fish and Wildlife Service (Recovery Plan) and a 1994 "Evaluation of BLM Approved Transplant Sites for Utah Prairie Dogs" written by Kenneth P. McDonald of DWR and Rebecca A. Bonebrake of BLM (1994 Evaluation).

Most of the arguments presented by appellants in IBLA 95-257 are similar to those raised in IBLA 95-256. Nonetheless, our May 30, 1995, order found that these appellants "do not allege any interest which may be harmed as a result of the proposed action," thereby indicating that they may not have standing to appeal. Standing to appeal requires that an appellant be a "party to [the] case" and have a legally cognizable interest which is "adversely affected" by the decision. 43 CFR 4.410(a); see Missouri Coalition for the Environment, 124 IBLA 211, 216 (1992), and authorities cited. The appellants have not offered further information to support their standing to appeal as a party to this case; since they have failed to show they have standing to maintain an appeal, their statement of reasons can only be considered as an amicus brief for the purpose of this decision, and it has been so treated.

[1] Arguments raised in IBLA 95-256 by the Burton SOR primarily concern effects prairie dogs may have on the Adams Well allotment. An argument that historic use of allotment lands by prairie dogs has not been documented is not well taken: The 1994 Evaluation by McDonald and Bonebrake indicates (on page 1) that the allotment is within the animal's historic range. The Utah Prairie Dog Recovery Plan dated September 30, 1991, also provides documentation to the same effect. Id. at 3, 4. It is also argued by Burton that the proposed demonstration site includes sec. 16, a state-owned section; this contention is not, however, correct. The site is located in sec. 15, T. 32 S., R. 12 W., near the boundary of sec. 14, on Federal land (see 1995 EA). Maps supplied with the 1994 Evaluation and the 1995 and 1979 EA's show that the location of this site has not varied and that there is no question that it is located entirely on Federal land (see 1979 EA site map; 1995 attachment 1 (map); 1994 Evaluation, Fig. 4).

Another argument in the Burton SOR concerning a perceived failure by BLM to establish an "abundance index" is similarly without foundation. The abundance index argument is a reference to guidelines for establishment of transplant sites published in Appendix B to the Recovery Plan. Appendix B defines abundance index in terms of moisture, elevation, grass cover, and soil saturation, and concludes that "the predicted abundance index for the [transplant] site should be at least 36." The demonstration site presently at issue, however, is not a transplant of the type contemplated by the Recovery Plan, but a more limited demonstration study; there has been no showing, as to the limited study proposal now under consideration, that it must meet all standards for a transplant site or even that they have not been met. Given the small extent of the study sites, and considering that the 1995 decision established a 5-year limit for the study, the Burton SOR has failed to show that this term has any practical consequence for the instant case.

Appellants also argue that the 1994 Evaluation shows demonstration site #6 is not suitable for the planned demonstration study and that BLM has disregarded this information (Burton SOR at 7). The record does not support this assertion. While it is apparently true that it was planned to move prairie dogs to site #6 in 1984, the action did not take place (see 1994 Evaluation at 10). Site #6 had, nonetheless, been recommended for prairie dog use in consideration of a number of favorable factors (see 1979 EA at 6). Those conditions have not been shown to have changed, nor is it likely that they would have done so, in the absence of marked climatic changes. Among such considerations is the presence of edible ricegrass and absence of shrubbery obnoxious to prairie dogs (1994 Evaluation at 10). The record shows that the suitability of site #6 for use as a study area in the manner proposed by BLM has been considered and that use of the site for a demonstration study is supported by both the 1979 and 1995 EA's and by the 1994 Evaluation.

The Burton SOR argues that BLM failed to consider the effect of the proposed study on the relevant range management plan, and argues that fencing part of the study area will reduce forage available for grazing; Burton's SOR also expresses concern that prairie dog consumption of forage in the spring could substantially affect the availability of forage for grazing in the fall. Arguing that "[t]here is no limit to what they will eat," he quotes the 1994 Evaluation:

Cool season palatable forage is extremely important because it is available during a period when prairie dogs have the greatest nutritional needs. Prairie dogs emerge from hibernation in March and April and immediately need to restore energy reserves used during hibernation. Utah prairie dogs usually breed in March and lactate into June. During this period the energy requirement of females is almost 2 times greater than during summer. Crocker-Bedford (1976) reported that 52% to 68% of the annual total grazing by Utah prairie dogs occurs from March to mid-June.

(1994 Evaluation at 5-6). Accepting the correctness of this finding means, however, that Burton admits that less than 0.68 animal unit months (AUM's) will be consumed by prairie dogs at the demonstration sites between March and June in any given year, since, as the 1995 EA explains:

A 40 acre enclosure would contain less than 0.2% of the federal acres within the Adams Well Allotment. A portion of the enclosure may be opened for controlled grazing. The enclosure may be removed when it is no longer useful for monitoring. There would be less than 10 animal unit months (AUMs) [defined by 43 CFR 4100.0-5 as the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month] of forage within the enclosure. This would be compensated for by the Kern River Pipeline Seeding located within one mile. It would also be compensated for by the Mud Springs Burn revegetation, also located in this allotment. It is anticipated that prairie dogs would use less than one AUM.

(1995 EA at 2-3). This establishes that infringement of prairie dogs on domestic livestock will be nil, contrary to speculation by appellants, and shows the insignificant size of the demonstration project in relation to the allotment as a whole. Attachment 1 of the 1995 EA shows the Adams Well allotment to be an irregularly shaped area of approximately 23,000 acres, including State lands. Within the allotment in 1979, about 1,980 AUM's were authorized (see Table 1, 1994 Evaluation). In the context of this case therefore, and assuming that forage levels remain roughly constant, the proposed prairie dog project will account for consumption of about 0.05 percent of available forage, a negligible amount. It is upon this record that BLM found there would be no significant impact to the human environment. The finding that the demonstration project would have no significant impact is fully supported by the record before us. While

appellants conjecture that the project and the number of animals included within it will increase dramatically in size so as to endanger cattle grazing, they have offered no evidence in support of this assumption.

One challenging a finding of no significant impact "must demonstrate either an error of law or fact or that the analysis failed to consider a substantial environmental problem of material significance to the proposed action." Oregon Natural Resources Council, 131 IBLA 180, 186 (1994). The arguments raised by appellants fail to meet this standard in this case; as a consequence the stay previously ordered must be cancelled and decision here under review must be affirmed. This Board has also determined that "[a]n EA must (1) take a hard look at the environmental consequences as opposed to reaching bald conclusions unaided by preliminary investigation, (2) identify relevant areas of environmental concern, and (3) make a convincing case that environmental impact is insignificant." Southern Utah Wilderness Alliance, 123 IBLA 302, 308 (1992), and cases cited. Our review of the record in this case establishes that BLM has done so in the case of the proposed study; the record supports BLM's decision and the finding that the study will have no significant impact on the Adams Well allotment.

In reaching this conclusion, we have considered and found to be without foundation additional contentions by all interested parties in both appeals that: the EA does not address impacts on the grazing allotment's range management plan due to loss of forage, loss of the fenced area, and possible migration of prairie dogs to other areas; the site lacks appropriate vegetation; the grazing permittee has not been asked for approval to use the site; the fenced area will close one road and a road through the unfenced area will affect the reliability of the study; the soil at the site is not favorable for study purposes; BLM failed to consider the precipitation rate; prairie dogs are not threatened animals under Endangered Species Act criteria; a successful transplant will establish a permanent prairie dog population; compensation forage obtained from by seeding the Kern River pipeline will not be planted; prairie dog holes will be a hazard to horses and riders; prairie dogs present a danger of plague; past transplants have not been successful, most likely due to plague cycles; predators cannot be used to manage population levels; and that the study will reduce income from livestock and thereby affect local businesses. The quantity and character of the arguments raised by appellants supports the observation by Barbara A. Bonebrake appearing in a memorandum dated March 1, 1995, summarizing the proceedings of a meeting with the Adams Well allotment permittees on January 19, 1995. She reports:

The permittees expressed concerns that prairie dogs would expand throughout the allotment, that management of these animals would control all grazing decisions, and that [the permittees] would be kicked off the allotment so that it could be used exclusively by Utah prairie dogs. * * *

The permittees were asked several times to specifically explain how the proposal would impact their livestock operations.

An answer was not given. They basically stated their concerns with loss of forage and that they did not want prairie dogs on their allotment.

This report fairly summarizes the arguments made now by the Burton SOR and the amicus brief on appeal; the contentions raised are not founded upon fact or based on the record presented on appeal; they are rejected.

On the record before us, therefore, we find that BLM correctly found that the proposed Utah prairie dog study would not significantly affect the human environment. The limited nature of the study and the small area affected, amounting to less than 80 acres, could have only an insignificant effect upon the Adams Well allotment. Under the circumstances shown, we find that BLM took a hard look at the impact of the study on livestock grazing in the allotment as a whole and made a convincing case that any impact of the study on the allotment would not be significant.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Area Manager of the Beaver River Resource Area is affirmed and the stay previously ordered is cancelled.

Gail M. Frazier
Administrative Judge

I concur:

Franklin D. Arness
Administrative Judge